



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for an order of possession, and a monetary order for unpaid rent and the filing fee, and an order to keep all or part of the security deposit.

The Landlord provided affirmed testimony that she served the Tenant, by registered mail with the Application for Dispute Resolution and Notice of Hearing on January 09, 2012. The Landlord provided a copy of the registered mail tracking number and receipt from Canada Post into evidence, as proof of service. I find that the Tenant was served the Application and Notice of Hearing in accordance with section 88 of the Residential Tenancy Act (the "Act").

The Tenant did not participate in the conference call hearing. The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to an order of possession and a monetary order for unpaid rent and recovery of the filing fee and an order to keep all or part of the security deposit?

### Background and Evidence

The signed tenancy agreement between the parties was submitted in the evidence by the Landlord. The tenancy agreement states that the tenancy commenced on July 03, 2008 and rent is due on the first day of the month in the amount of \$1,200.00. The Landlord stated that the Tenant paid a security deposit of \$600.00 on July 03, 2008.

The Landlord testified that the Tenant has had difficulty paying the rent on time and failed to make full payment of the rent for over one year, since January 2011. The Landlord stated that the owners of the have given the Tenant many chances to rectify the situation, but the outstanding rent is now out of hand. The Tenant is now behind the equivalent of four month's rent, and although she has made numerous promises to the Landlord to pay off the balance, the Landlord no longer believes her. The Landlord testified that she served the Tenant with the 10 Day Notice to End Tenancy for Unpaid Rent in person on December 13, 2011 at the rental unit.

The Landlord stated that the Tenant did not pay the full amount of the outstanding rent within five days. The Landlord stated that the Tenant has not moved out of the rental unit and is still in the rental unit at the time of the hearing. The Landlord stated that the Tenant has also not paid the full rent for January 2012, as she only paid \$700.00 on January 04, 2012. The Landlord stated that the Tenant has still not paid the outstanding rent of \$4,300.00 owed for past months. The Landlord stated that the Tenant owes a total of \$4,800.00, which is comprised of \$4,300.00 as stated on the Notice to End Tenancy plus \$500.00 for January 2012 rental income loss (\$1,200.00 - \$700.00 paid January 04, 2012). The Landlord stated that when the Tenant came to pay some of the rent on January 04, 2012, the Landlord told her that she still owed the \$4300.00 as stated in the Notice and the \$500.00 for January 2012. The Landlord stated that she told the Tenant that she would be applying for an order of possession and the outstanding rent through dispute resolution. The Landlord provided a copy of their account ledger to show the Tenant's rent arrears and payment history.

The Landlord stated that she has never applied for dispute resolution before against this Tenant, but that the outstanding rent problem has gone on long enough. The Landlord stated that she applied for Dispute Resolution on January 06, 2012 as a result. The Landlord stated that she served the Tenant, by registered mail with the Application for Dispute Resolution and Notice of Hearing on January 09, 2012.

The Landlord is requesting an order of possession. The Landlord requests a monetary order for \$4,800.00 as stated on the Application, which represents \$4,300.00 in outstanding rent owed as stated on the Notice to End Tenancy, plus \$500.00 rental income loss for January 2012, as the Tenant has not vacated the rental unit. The Landlord has applied to keep the security deposit plus any accrued interest in partial satisfaction of the amounts owed by the Tenant.

The Landlord has also applied for reimbursement of the \$50.00 filing fee for this proceeding.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I accept the Landlord's evidence that the Tenant was properly served with the 10 Day Notice to End Tenancy for Unpaid Rent on December 13, 2011 in accordance with the Residential Tenancy Act (the "Act") and Policy Guideline.

As the Notice was personally served on the Tenant on December 13, 2011, it was deemed to have been served the same day. The Notice states that the Tenant had five days to pay the full amount of the outstanding rent, or apply for Dispute Resolution, or the tenancy would end from the service date. The Tenant did not pay the outstanding rent and did not apply to dispute the Notice to End Tenancy within five days from the

date of service. The deadline to do so was December 18, 2011. The Notice indicates that the Tenant had 10 days to vacate the premises, based on the service provisions set out in the Act and the Residential Tenancy Policy Guideline. The Landlord did not correctly calculate the 10 days on the Notice, so I find that the 10<sup>th</sup> day on which the Tenant should have vacated the rental unit is December 23, 2011. I find that rent was not paid within five days and the Tenant did not file an Application to dispute the Notice.

Based on the foregoing, I find that the Tenant is conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on December 23, 2011, which is 10 days after the effective date of the Notice. Therefore, I find that the Landlord is entitled to an order of possession.

Section 26 of the Act requires a Tenant to pay rent when it is due under the tenancy agreement. In this case, the tenancy agreement submitted into evidence by the Landlord states that rent is due on the first of the month. I find that the Tenant failed to pay the full amount of the outstanding rent and did not vacate the rental unit within 10 days of service of the Notice. The Tenant did not file an Application to dispute this Notice. I find that the Landlord also incurred rental income loss for January 2012, as the Tenant failed to move out as required by the Notice and has not paid the Landlord the full amount of rent for January.

I find that the Landlord is entitled to a monetary order for \$4,800.00, which represents \$4300.00 in unpaid rent as stated on the Notice to End Tenancy and \$500.00 rental income loss for January 2012, as demonstrated in the Landlord's accounting ledger submitted into evidence.

As the Landlord has succeeded in their Application, I find that the Landlord is entitled to recover the \$50.00 fee for this proceeding. I have added this amount to the monetary order against the Tenant bringing the total amount owing to \$4,850.00.

I order that the Landlord retain the security deposit (\$600.00) plus interest accrued to date (\$4.48) for a total of \$604.48, in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$4,245.52**.

### Conclusion

I find that the Landlord is entitled to an order of possession effective **two days after service** on the Tenant. This order must be served on the Tenant and may be filed in the Supreme Court.

I find that the Landlord may keep the security deposit plus accrued interest in partial satisfaction of the claim and is granted a monetary order for the balance due in the amount of **\$4,245.52**. This order must be served on the Tenant and may be filed in the Provincial Court (Small Claims).

The orders accompany the Landlord's copy of this decision.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: January 27, 2012.

---

Residential Tenancy Branch